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No. 5 Original.

# In the Supreme Court of the United States.

OCTOBER TERM, 1908.

THE UNITED STATES OF AMERICA, COMPLAINANT,

vs.

JOSEPH F. SHIPP, ET AL.

## SUPPLEMENTAL REPLY BRIEF OF MATTHEW CALLOWAY IN THE ABOVE STATED CAUSE.

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Said defendant, for reply to the charges contained in the information and statement of the cause, and for evidence of the condition and state of feeling, etc., existing at the date of the lynching of Ed. Johnson, as also to his faithful service rendered theretofore in the protection of the prisoner Ed. Johnson, refers to and adopts the brief and argument therein contained in behalf of J. F. Shipp, sheriff of Hamilton County, and reiterates the statements therein contained in his defense as fully as though herein again set forth.

Defendant Galloway calls the attention of the court, to show that he was not guilty of any of the charges made against him, to the evidence of C. A. Baker, one of the defendants, who was discharged as a defendant by the Government and who is no longer prosecuted as a defendant.

This witness says he went, on the night of the lynching about 8 o'clock, to Eagle Hall. He had not heard any suggestions or hints during that day or night that Johnson would likely be lynched. (*See printed R. p.* 1078.)

He had no communication nor understanding with any supposed lynchers or mobbers. Nothing occurred to arouse his suspicion. The night of the lynching, he was playing a game of cards with Mr. Fred Frawley (one of Shipp's deputies), Jim Elliott, and *Mat Galloway* (another of Shipp's deputies.) While engaged in this game, somebody brought the news that there was a mob at the jail. He got up and left immediately with Mat Galloway and Fred Frawley and went directly to the County jail, running the greater part of the way. In going to the jail they passed Mr. Burke, a policeman. Witness says: "They (the mob) had gone from the jail before *we got there.*" They saw Capt. Shipp at the jail and he told them to go to the bridge as soon as they could. (*See R.* 1079.) Sheriff Shipp told that to Mr. Galloway and the witness. They went to the bridge as soon as they could get guns. Johnson was dead when they got there.

If they had learned earlier that the mob was at the jail, they would have defended jail and prisoner. Jail had not been guarded after Johnson was convicted. (*R.* 1080) No guard had been around the jail from the time he was convicted. (1081) Witness neither saw nor knew anything that indicated danger to Johnson while he was there in jail after being brought back from Knoxville.

On cross-examination, he says he had heard nothing about a telegram; that he saw something about the action of the Supreme Court in the newspaper. That Sheriff Shipp did not tell him about it — did not tell him to come to the jail or be one guard that night (*R.* 1081), but he told them to go to the bridge as fast as they could; remembers Burke speaking to them as they went to the jail, but not what he said. Did not know until they reached the jail that Johnson had been lynched. (*R.* 1082)

He walked back from the bridge with Matt Galloway. (*R.* 1083)

M. J. Horan says that he heard they were going to lynch Johnson a few minutes before the mob came out of the jail. He tells wha tSheriff Shipp said to him and the condition of the sheriff immediately after the lynching. (*R.* 1085-86-87)

Witness says he knows Matt Galloway, Fred Frawley, Marion Perkins. None of these men were at the jail when he first went there. Matt Galloway rushed into the jail just a moment after witness reached there the second time; then witness saw Frawley and Baker. (*R.* 1088)

Will Burke, policeman, testifies that he was on duty the night of the lynching. His beat ran from Market to A. Street on Eighth and Ninth Street; that is, from Eighth to Ninth on Market, on Market, Cherry and Georgia Avenue. The nearest point of his beat on Georgia Avenue and Eighth Street, a little over a block and one-half from the jail at *The Times* building. (*R.* 1058) He heard of the lynching,

something after 10 o'clock. A motorman on the electric car told him. The rope or bell-cord was missing from this car. The bell-rope, he was informed, had been used in lynching Johnson. This information of the lynching of Johnson was after 10 o'clock. About five or six minutes after he got the information of the lynching he saw Mr. Galloway, Mr. Baker and Fred Frawley, deputies, running across Market Street from about the center of the block on the west side near the front of Loveman's, in the direction of the jail. They did not tell him anything. He told them that they were too late; that the negro was already dead. (*R.* 1058-59)

Defendant Galloway testifies, that he was criminal court deputy, or served criminal court papers and made arrests, or in other words served process for witnesses and arrest of criminals. Had no charge of the jail or keeping of prisoners, only when ordered there to guard at night three or four days during Johnson's trial. Had nothing to do with keeping jail at any other time. It was no part of his business to exercise any supervision over the jail or to guard or protect the prisoner. (*R.* 1061-62) Had no connection with the jail or the prisoners at any time after Johnson was brought from Knoxville on the 10th or 11th of March.

Criminal court was in session at the time and he was attending to his duties, serving papers for this court; that while attending his duties he heard nothing or nothing that made him think that Johnson was in danger. Had received no intimation or desire that he should be at the jail for the pro-

tection of Johnson; had heard no threats of lynching. (*R.* 1062-63)

On the night Johnson was lynched, he was at the Eagle Club room. Jim Elliott was there with him, also Baker and Frawley, deputy sheriffs. A Mr. Schwartz was there. Witness was a member of this club. All the parties mentioned as present were members of the club. Witness has been a member of the club two and one-half years; had been there three and four nights in the week generally, sometims every night. Belonged to the Masons, Odd Fellows, Knights of Pythias, Rebeccas, Fraternal Censer, Junior Order, and the Iron Moulders' Union. Went to the Eagle Club about 7:45 p. m. Had at no time prior to the time he went to the club heard anything about any impending lynching or danger. The first information he received of the lynching was some time after 10 o'clock. Someone said they were lynching Johnson or trying to lynch him. Witness left immediately for the jail with Baker and Frawley; went the most direct route from the club room to the jail. (*R.* 1065) When he got to the jail he met Capt. Shipp coming outside the door; ascertained mob had gone with the prisoner. Sheriff asked witness to go to the bridge. He told him as soon as he could get a gun he would go. He wanted a Winchester rifle — got it and went to the bridge at once. (*R.* 1066) Didn't have to wait for a car as one came along as he was ready to go. When they reached the bridge they found Johnson's body. He was dead. Someone ran down and wanted to cut off some of his clothing; didn't see any of

the mob there. Came back to the jail immediately after he saw the body; remained at the jail until after 1 o'clock. No such thing as a luncheon occurred at the jail that night; had not agreed nor combined nor confederated with anybody to have Johnson lynched. Knew nothing of anybody having any intention to lynch him. (*R.* 1068) Witness then detailed the efforts on the part of himself and other deputies in preventing the mob from breaking into the jail some weeks prior to the night Johnson was actually mobbed. (*R.* 1068-69-70-71)

Witness further states that if he had known or had any intimation of this lynching, that he would have done the same thing for the protection of Johnson at the time he was lynched. (*R.* 1071)

On cross-examination, he says that the sheriff did not tell him about the telegram or send him any message in reference to it, neither did any deputy; was not summoned to be at the jail that night. (*R.* 1073)

Mr. Galloway is sustained in his statements as to where he was as hereinbefore shown by deputy sheriffs C. E. Baker, Fred Frawley, Jim Elliott and others, all good, reliable citizens.

It is clear from the foregoing testimony, and other evidence that might be referred to, that the defendant Matt Galloway was not with the crowd or mob that lynched Johnson, and that when we take into consideration the manner in which this defendant exposed himself and his life for the protection and to prevent the mobbing of Johnson there-

tofore, as is shown by the record in this case, it seems preposterous that the able attorneys for the Government should ask this honorable court to convict or hold this defendant to be in contempt of the orders of this honorable court, on the testimony of such witnesses as Henry A. Lee and his wife, both of whom impeach themselves so thoroughly and so effectively that no one, much less this honorable court, could give any credence to their statements; and especially is this true when taken in connection with the impeachment of the various witnesses, as set forth in this record, to-wit, R. L. Killian (*R.* 1231-36), Geo. T. Balfour (*R.* 1237-8), P. C. Kramer (*R.* 1239-34), C. L. Ramsel (*R.* 1244-48), Jno. E. Taylor (*R.* 1248-53), A. V. Odem (*R.* 1254-55), Jno. E. Taylor, recalled (*R.* 1255-6), Dr. H. K. Bearden (*R.* 1256-58), J. N. Payne (*R.* 1258-1260), J. P. Webb (*R.* 1260-61), B. A. Close (*R.* 1261-64), J. H. Jeunot (*R.* 1264-66), J. L. Elliott (*R.* 1266-69), N. A. Smith (*R.* 1269-72.)

To us it is very great surprise that in the face of this testimony, introduced in behalf of defendant Galloway, who establishes a good character and proves beyond question that he was not a member of the mob lynching Johnson, that eminent counsel for the Government should ask his conviction on the testimony of such witnesses as Lee and his wife, and that Government counsel should undertake to distort or twist the testimony of A. J. Ware so as to try to make this testimony of Ware connect this *defendant Galloway*, whom Ware saw on the bridge, with the lynching, when the proof

establishes, beyond question, the fact that Galloway was not only not with the mob or about the jail, or at the bridge at the time the lynching occurred, but, as shown by the proof, was at the time the lynching occurred in the Eagle Club rooms on Market Street and knew nothing of the mob until after the lynching occurred.

This honorable court will look into the conduct and the resistance made by this courageous, faithful officer in the defense of the lives of prisoners in his hands. It will take into consideration all the testimony as presented in the record, and when it does this, we feel confident that this honorable court will discharge this faithful officer, as well as all the officers, including the sheriff and each of his deputies, and commend their faithfulness as officers in the discharge of their duty.

Respectfully submitted,

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